HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 570 of 2006.
Reserved on: 21.11.2007.
Decided on: 29.12.2007.

Himat Ram Saini ..... Petitioner.

Versus

The Financial Commissioner (Appeals) and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the petitioner:	Mr.H.K. Paul, Advocate.
For respondent No.1, 3 & 4:	Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.
For respondent No.2:	Mr.N.K. Sood, Advocate.

Per V.K. Ahuja, J:

This is a petition filed by the petitioner under Articles 226/227 of the Constitution of India challenging the order passed by Financial Commissioner (Appeals) on 23.5.2006 as against the petitioner.

Briefly stated the facts of the case, as alleged by the petitioner, are that late Shri Thanu Ram, the father of the petitioner, being an oustee of Beas Satluj Link Project, applied for the grant of Nautor land under the Rehabilitation Scheme framed by the Government of Himachal Pradesh for the resettlement of these oustees. On this application having been submitted by late Shri Thanu Ram, the land was granted in favour of late Shri Thanu Ram measuring 998 sq.

Whether reporters of local newspapers may be allowed to see the judgment? Yes.

metres in Mohal Changar, Tehsil Sundernagar, District Mandi, Himachal Pradesh, against the payment of *nazrana*, vide order dated 2.3.1993. Respondent No.2 assailed the order of allotment of land in favour of late Shri Thanu Ram before the Deputy Commissioner, Mandi, who accepted the appeal, vide order dated 10.6.1996. It was alleged that the Deputy Commissioner found fault with the original allottee late Shri Thanu Ram since he had sold the land violating the terms and conditions of *patta*. The said late Shri Thanu Ram preferred an appeal against the order passed by the Deputy Commissioner, vide Annexure P-2 and the said late Shri Thanu Ram, the father of the petitioner, died on 16.11.1996 during the pendency of the appeal before the Commissioner, Mandi. An application under Order 22 Rule 3 CPC was filed by the petitioner for bringing on record the legal heirs of deceased Thanu Ram, which application was not considered by the Commissioner, who concurred with the observations of the Deputy Commissioner, while passing order on 9.12.1998. The said order of the Commissioner was assailed before the Financial Commissioner (Appeals), respondent No.1, by the petitioner and during the hearing of the case before respondent No.1, she asked the counsel for the petitioner whether he would like this matter to be heard by the said Presiding Officer since the petitioner was known to the said Presiding Officer and the petitioner was serving the respondent/State where the said Presiding Officer was posted as Deputy Commissioner and during this posting, as per the petitioner, his relations with the said Deputy Commissioner were sour and the petitioner was compulsorily retired by the said Presiding Officer acting as Deputy Commissioner, Mandi. Thus, respondent No.1 knew the petitioner very well and had accordingly asked the petitioner's counsel if he wanted the matter to be heard by her or not.

Thereafter, the petitioner drafted an application requesting that the petition should not be heard by respondent No.1. But on the next date, respondent No.1 decided the revision petition, vide her impugned order, though she had dealt with the file of the petitioner regarding the land as Deputy Commissioner, Mandi also.

Thus, the petitioner had challenged the impugned order passed by the Financial Commissioner being in violation of principles of natural justice, which require that she should not have heard the petition.

On application filed by the petitioner, the said Financial Commissioner was impleaded as a party to the petition as respondent No.4, who also filed reply alongwith other respondents. In reply filed by respondents No.1, 3 and 4, they pleaded that the Divisional Commissioner, vide his orders, dated 9.12.1998, had upheld the order, dated 10.6.1996, passed by the Deputy Commissioner, Mandi. Respondent No.4 was not the Deputy Commissioner, at Mandi at the relevant time. Respondent No.4 admitted that she was the Deputy Commissioner, Mandi during which period disciplinary action was taken by her against the petitioner, which action was taken after due inquiry and there was nothing that the relations of the petitioner were sour and respondent had acted in an unbiased manner. Respondent No.4 admitted that counsel of the petitioner was asked whether the petitioner would like his case to be heard by the replying respondent and she had no illwill against the petitioner. The application was filed by the petitioner when the arguments had been heard and the case was kept for orders. It was further pleaded by respondent No.4 that the replying respondent in order, dated 23.5.2006, had observed that there was no provision of revision against an order passed by the Deputy Commissioner under the Scheme under which the land was allotted to the petitioner. Therefore, the application filed by

the petitioner that the case may not be heard by respondent No.4 was not considered, which petition could not have been transferred to any other Officer conferred with the powers of Financial Commissioner and there being no provision for filing revision petition. Thus, it was pleaded that the order was passed by respondent No.4 in accordance with law.

We have heard the learned counsel for the parties and have gone through the record of the case.

The land was allotted to late Shri Thanu Ram as Nautor land being an oustee of Beas Satluj Link Project under the Rehabilitation Scheme framed by the Government of Himachal Pradesh, vide order dated 2.3.1993. However, on appeal by one Shri Madan Lal, respondent No.2 in this case, the said Nautor allotment was challenged on the ground that out of this land, 63 sq. metres of land has been sold by late Shri Thanu Ram. Since there was no provision for appeal under the H.P. Nautor Rules relating to Scheme for Rehabilitation, therefore, the appeal was considered by the Deputy Commissioner, who observed that there has been a breach of terms and conditions of the patta, vide which the land has been sold and, therefore, the allotment made in favour of the said late Shri Thanu Ram was cancelled by the Deputy Commissioner, vide order, dated 10.6.1996.

On appeal preferred by said Shri Thanu Ram, the said order of the Deputy Commissioner was upheld. A revision was preferred before the Financial Commissioner by late Shri Thanu Ram through the petitioner and respondent No.4, while exercising the powers of Financial Commissioner, passed the impugned order, dated 23.5.2006 and observed that the appellant had violated the conditions of *patta* by selling a part of the land within three years of the grant and plea was raised on behalf of the State that the grant was rightly

cancelled by the Deputy Commissioner, which order was upheld by the Divisional Commissioner, Mandi. It was observed by the Financial Commissioner that according to the form of *patta*, the grantee could not have alienated the land within a period of 15 years from the date of grant since the grant was made on 2.3.1993 and a part of it was sold in 1996. It was further observed that under the Scheme, there was no provision for filing of third appeal or revision against the order of Deputy Commissioner. Therefore, the revision petition was dismissed.

Coming to the allegations made that the Financial Commissioner had heard the petition herself, it has not been disputed by the said Financial Commissioner, as respondent No.4, that she did ask the counsel for the petitioner, if the petitioner would like the case to be heard by the respondent herself since the replying respondent had proceeded against the petitioner in a departmental inquiry. But she clearly pleaded that there was no illwill or bias against the petitioner and since the case had to be heard by the Financial Commissioner, it could not be transferred to any other Officer and, therefore, she heard the case on merits and dismissed the petition mainly on the ground of jurisdiction as well as on the ground that the sale had been made by the original allottee in violation of the Rules. In case there is only one post of the Financial Commissioner and there was no other person to whom the revision petition could be transferred by the then Financial Commissioner, the mere fact that the Financial Commissioner, during her earlier posting, had passed some adverse orders against the petitioner, does not lead to an inference that she had any bias or illwill since she had performed her duty as Deputy Commissioner and had proceeded against the petitioner in departmental inquiry without any prejudice as pleaded by her, duly supported by an affidavit. In such circumstances, when

the Financial Commissioner had given the option to the petitioner if he wanted the case to be heard by any other person, the judicial proprietary required that the case should not have been heard by her since the petitioner had also submitted an application in this regard. However, in view of the fact that the allotment was made long back in 1993, which was cancelled in 1996, we are not inclined to remand the case to another Financial Commissioner for fresh hearing. However, keeping in view the time that has elapsed, we had considered it proper to see the legality of the order passed by the Financial Commissioner. The reasoning given by the learned Financial Commissioner is correct that there is no provision for third appeal before the Financial Commissioner under the provisions of the Rehabilitation Scheme and that the original allottee had violated the conditions of the allotment by selling the land within a period of three years of its allotment which was against the Rules. Therefore, no case is made out for exercising the writ jurisdiction for quashing the order passed by the Financial Commissioner, which does not suffer from any illegality.

In view of the above discussion, there is no merit in the writ petition filed by the petitioner, which is dismissed accordingly. Parties are left to bear their own costs.

In view of the final disposal of the main petition, all the pending applications shall also stand disposed of. Interim order, if any, shall also stand vacated.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge.

December 29, 2007. (TILAK)